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RECORDATION NO 16791 FILED 1425

MAR 12 1990 -9 05 AM

INTERSTATE COMMERCE COMMISSION

15 RUE DE LA LOI
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March 12, 1990

\$15.00 filing fee

Dear Ms. McGee:

On behalf of The CIT Group/Equipment Financing, Inc., I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, two (2) executed counterparts of a primary document, not previously recorded, entitled Fleet Rental Security Agreement ("Agreement"), dated as of March 6, 1990.

The parties to the enclosed Agreement are:

Hargis Leasing, Inc. - Debtor (for indexing purposes,
Mortgagor)
200 Tremont Street
Gordon, Wilkinson County, Georgia 31031

The CIT Group/Equipment Financing, Inc. - Secured Party
(for indexing purposes, Mortgagee)
2877 Brandywine Road
Suite 300
Atlanta, Georgia 30341

The Agreement covers, among other things, a loan from the Secured Party to the Debtor secured by certain rolling stock.

The units of equipment covered by the Agreement are those thirty-one (31) HARX 14,000 gallon Kaolin slurry tank cars as identified in the Agreement.

A short summary of the document to appear in the ICC Index is as follows:

"Covers 31 HARX tank cars - 1045-1075."

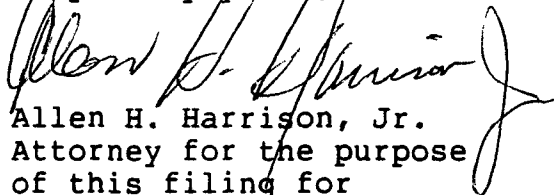
Enclosed is a check in the amount of fifteen dollars (\$15.00) in payment of the filing fee.

NEW
NUMBER

Handwritten signature/initials on the left margin.

Once the filing has been made, please return to bearer the stamped counterparts of the Agreement not needed for your files, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this transmittal letter.

Very truly yours,


Allen H. Harrison, Jr.
Attorney for the purpose
of this filing for
The CIT Group/Equipment
Financing, Inc.

Honorable Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Enclosures

AHH/iw

Interstate Commerce Commission
Washington, D.C. 20423

3/12/90

OFFICE OF THE SECRETARY

Allen H. Harrison, Jr.
Wilmer Cutler & Pickering
2445 M. St. N.W.
Washington, D.C. 20037-1420

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/12/90 at 9:05^{am} and assigned recordation number(s). 16791

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

Fleet Rental Security Agreement

For use in all Uniform Commercial Code States.

REGISTRATION NO. **16791** FILED 1685

MAR 12 1990 -9 05 AM

INTERSTATE COMMERCE COMMISSION

1. Grant of Security Interest; Description of Collateral.

The Debtor grants to Secured Party a security interest in the equipment described below, along with all present and future attachments and accessories thereto and replacements and proceeds thereof, including amounts payable under any insurance policy, all hereinafter referred to collectively as "Collateral": Describe Collateral fully including make, kind of unit, model and serial numbers and any other pertinent information.

Thirty-One (31) 14,000 Gallon Kaolin Slurry Tank Cars, having the following Serial Numbers: HARX1045, HARX1046, HARX1047, HARX1048, HARX1049, HARX1050, HARX1051, HARX1052, HARX1053, HARX1054, HARX1055, HARX1056, HARX1057, HARX1058, HARX1059, HARX1060, HARX1061, HARX1062, HARX1063, HARX1064, HARX1065, HARX1066, HARX1067, HARX1068, HARX1069, HARX1070, HARX1071, HARX1072, HARX1073, HARX1074, HARX1075, and all leases, chattel paper, rentals and other income related thereto and arising therefrom, and all cash and non-cash proceeds thereof.

This Fleet Rental Security Agreement is given in good faith to better secure the indebtedness evidenced by Fleet Rental Security Agreement's given to The CIT Group/Equipment Financing, Inc., Secured Party, from Hargis Leasing, Inc., Debtor, dated February 22, 1989 in the original principal sum of \$578,000.00, dated April 21, 1989 in the original principal sum of \$392,000.00; dated June 20, 1989 in the original principal sum of \$605,000.00.

2. What Obligations the Collateral Secures.

Each item of Collateral shall secure not only the specific amount which the Debtor promises to pay in Paragraph 3 below, but also all other present and future indebtedness or obligations of Debtor to Secured Party of every kind and nature whatsoever. Consequently, the security interest granted by Debtor to Secured Party shall continue effective irrespective of the payment of the amount in Paragraph 3, so long as there are any obligations of any kind, including obligations under guaranties or assignments, owed by Debtor to Secured Party.

3. Promise to Pay; Promissory Note.

Debtor promises to pay Secured Party (i) the principal sum of \$ 1,575,000.00 plus (ii) Interest and charges. Payments to be provided in the aforementioned Fleet Rental Security Agreements dated February 22, April 21 and June 20, 1989.

4. Collateral to Remain Personal Property; Location of Collateral.

The Collateral shall remain personal property, not become part of the real estate regardless of the manner of affixation and be kept at

200 Tremon Street, Gordon, Wilkinson Co., Georgia.
Address City County State

Debtor will not remove any of the Collateral from such location without prior written consent of Secured Party or as provided in Paragraph 6.

5. Debtor's Warranties, Representations and Agreements.

Debtor warrants and represents:

- that Debtor is justly indebted to Secured Party for the full amount of the foregoing indebtedness and interest thereon;
- that Debtor lawfully possesses and owns the Collateral;
- that except for the security interest granted hereby the Collateral is free from and will be kept free from all liens, claims, security interests and encumbrances; with the exception of the liens held by AmSave Credit Corporation, 1165 Northchase Parkway, Suite 165, Marietta, Georgia 30067;
- that no financing statement covering the Collateral or any proceeds thereof is on file in favor of anyone other than Secured Party but, if such other financing statement is on file, it will be terminated or subordinated; with the exception of AmSave Credit Corporation, 1165 Northchase Parkway, Suite 165, Marietta, Georgia 30067; and
- that all information supplied and statements made by Debtor in any financial, credit or accounting statement or application for credit prior to, contemporaneously with or subsequent to the execution of this Security Agreement are and shall be true, correct, complete, valid and genuine.

Debtor agrees:

- to defend at Debtor's own cost any action, proceeding or claim affecting the Collateral;
- to pay reasonable attorneys' fees (at least 15% of the unpaid balance if not prohibited by law) and other expenses incurred by Secured Party in enforcing its rights against Debtor under this Security Agreement;

5. Debtor's Warranties, Representations and Agreements (Continued)

- (c) to pay promptly all taxes, assessments, license fees and other public or private charges when levied or assessed against the Collateral or this Security Agreement or said note and this obligation shall survive the termination of this Security Agreement;
- (d) that, if a certificate of title is required or permitted by law, Debtor shall obtain such certificate with respect to the Collateral, showing the security interest of Secured Party thereon, and in any event do everything necessary or expedient to preserve or perfect the security interest of Secured Party;
- (e) that Debtor will not misuse, fail to keep in good repair, secrete, or without the prior written consent of Secured Party encumber any of the Collateral; and
- (f) that Secured Party may enter upon Debtor's premises at any reasonable time to inspect the Collateral and Debtor's books and records pertaining to the Collateral, and Debtor shall assist Secured Party in making such inspection.

6. Rental of Collateral by Debtor.

The Debtor is engaged in the business of renting Collateral of the kind described in Paragraph 1 of this Security Agreement. Both Debtor and Secured Party intend Debtor to rent this inventory Collateral, **but subject and subordinate to this Security Agreement** and only in the regular course of business as Debtor normally rents such inventory. Until default, Debtor may rent the Collateral or any part thereof in its regular course of business but subject to this Security Agreement. Upon such rental, Debtor may remove the Collateral to other locations, without prior consent of Secured Party, but Debtor shall report the location of the Collateral to Secured Party monthly. Debtor hereby agrees that Secured Party shall, at any time and from time to time, have full access to and the right to inspect the Collateral hereunder whether such Collateral is located on Debtor's premises or on the premises of any lessee to whom Debtor has leased any or all of the Collateral hereunder; that, in no event shall Debtor remove or permit the Collateral to be removed to a place other than the United States, exclusive of all Commonwealths, Territories and Possessions, without the written consent of Secured Party.

7. Assignment of Rentals and Leases.

To further secure payment of all Debtor's obligations under this Security Agreement, Debtor agrees:

- (a) **to assign** and hereby pledges and assigns any leases, rentals, accounts and contracts with respect to the Collateral hereunder which may now exist or hereafter arise together with all rights thereunder and all rental and other payments and purchase options due and to become due thereunder;
- (b) **to mark** all such leases with a legend that they are subject and subordinate to this Security Agreement;
- (c) **to deliver** and any all such leases together with all other instruments requested by Secured Party to evidence and confirm the aforesaid pledge; and
- (d) **to file**, at Secured Party's request, UCC financing statements otherwise perfect a first priority security interest against any such lessees; and to assign such financing statements to Secured Party.

So long as Debtor is not in default in the performance of any obligations hereunder, Debtor may collect and retain all rental payments due and owing under such leases directly from such lessees, without notification of this pledge to such lessees. No lease of the Collateral hereunder shall relieve Debtor from any of its obligations to Secured Party hereunder.

8. Sale of Collateral by Debtor; Release of Lien.

The Debtor may also be a seller engaged in the business of selling Collateral of the kind described in Paragraph 1 of this Security Agreement. If Debtor is a regular seller, it may sell the Collateral or any part thereof in its regular course of business, on the conditions that the proceeds of sale of each item of Collateral shall not be less than the amount of Secured Party's net investment in such item as determined by Secured Party plus interest and charges, and that Debtor shall hold all proceeds of sale in trust for and shall account for and remit the proceeds to Secured Party immediately upon receipt. If such proceeds are not sufficient to pay all indebtedness and interest, Secured Party may apply proceeds as it may in its discretion determine. Until any default, Debtor may procure the release of any item of Collateral from this security interest upon payment to Secured Party of Secured Party's net investment in such item, as determined by Secured Party, plus interest and charges.

9. Insurance and Risk of Loss.

All risk of loss, damage to or destruction of the Collateral shall at all times be on Debtor. Debtor will procure forthwith and maintain at Debtor's expense insurance against all risks of loss or physical damage to the Collateral for the full insurable value thereof for the life of this Security Agreement plus breach of warranty insurance and such other insurance thereon in amounts and against such risks as Secured Party may specify, and shall promptly deliver each policy to Secured Party with a standard long-form mortgagee endorsement attached thereto showing loss payable to Secured Party; and providing Secured Party with not less than 30 days written notice of cancellation; each such policy shall be in form, terms and amount and with insurance carriers satisfactory to Secured Party; Secured Party's acceptance of policies in lesser amounts or risks shall not be a waiver of Debtor's foregoing obligations. As to Secured Party's interest in such policy, no act or omission of Debtor or any of its officers, agents, employees or representatives shall affect the obligations of the insurer to pay the full amount of any loss.

Debtor hereby assigns to Secured Party any monies which may become payable under any such policy of insurance and irrevocably constitutes and appoints Secured Party as Debtor's attorney in fact (a) to hold each original insurance policy, (b) to make, settle and adjust claims under each policy of insurance, (c) to make claims for any monies which may become payable under such and other insurance on the Collateral including returned or unearned premiums, and (d) to endorse Debtor's name on any check, draft or other instrument received in payment of claims or returned or unearned premiums under each policy and to apply the funds to the payment of the indebtedness owing to Secured Party; provided, however, Secured Party is under no obligation to do any of the foregoing.

Should Debtor fail to furnish such insurance policy to Secured Party, or to maintain such policy in full force, or to pay any premium in whole or in part relating thereto, then Secured Party without waiving or releasing any default or obligation by Debtor, may (but shall be under no obligation to) obtain and maintain insurance and pay the premium therefor on behalf of Debtor and charge the premium to Debtor's indebtedness under this Security Agreement. The full amount of any such premium paid by Secured Party shall be payable by Debtor upon demand, and failure to pay same shall constitute an event of default under this Security Agreement.

10. Events of Default; Acceleration.

A very important element of this Security Agreement is that Debtor make all its payments promptly as agreed upon. Also essential is that the Collateral continue to be in good condition and adequate security for the indebtedness. The following are events of default under this Security Agreement which will allow Secured Party to take such action under this Paragraph and under Paragraph 11 as it deems necessary:

- (a) any of Debtor's obligations to Secured Party under any agreement with Secured Party is not paid promptly when due;
- (b) Debtor breaches any warranty or provision hereof, or of said note or of any other instrument or agreement delivered by Debtor to Secured Party in connection with this or any other transaction;
- (c) Debtor dies, becomes insolvent or ceases to do business as a going concern;
- (d) it is determined that Debtor has given Secured Party materially misleading information regarding its financial condition;
- (e) any of the Collateral is lost or destroyed;
- (f) a petition or complaint in bankruptcy or for arrangement or reorganization or for relief under any insolvency law is filed by or against Debtor or Debtor admits its inability to pay its debts as they mature;
- (g) property of Debtor is attached or a receiver is appointed for Debtor;
- (h) whenever Secured Party in good faith believes the prospect of payment or performance is impaired or in good faith believes the Collateral is insecure; or
- (i) any guarantor, surety or endorser for Debtor dies or defaults in any obligation or liability to Secured Party or any guaranty obtained in connection with this transaction is terminated or breached.

If Debtor shall be in default hereunder, the indebtedness herein described and all other indebtedness then owing by Debtor to Secured Party under this or any other present or future agreement (collectively, the "indebtedness") shall, if Secured Party shall so elect, become immediately due and payable. In no event shall the Debtor upon demand by Secured Party for payment of the indebtedness, by acceleration of the maturity thereof or otherwise, be obligated to pay any interest in excess of the amount permitted by law. Any acceleration of indebtedness, if elected by Secured Party, shall be subject to all applicable laws, including laws relating to rebates and refunds of unearned charges.

11. Secured Party's Remedies After Default; Consent to Enter Premises.

Upon Debtor's default and at any time thereafter, Secured Party shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws, including the right to any deficiency remaining after disposition of the Collateral for which Debtor agrees to remain fully liable. Debtor agrees that Secured Party, by itself or its agent, may without notice to any person and without judicial process of any kind, enter into any premises or upon any land owned, leased or otherwise under the real or apparent control of Debtor or any agent of Debtor where the Collateral may be or where Secured Party believes the Collateral may be, and disassemble, render unusable and/or repossess all or any item of the Collateral, disconnecting and separating all Collateral from any other property and using all force necessary. Debtor expressly waives all further rights to possession of the Collateral after default and all claims for injuries suffered through or loss caused by such entering and/or repossession. Secured Party may require Debtor to assemble the Collateral and return it to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties.

Secured Party will give Debtor reasonable notice of the time and place of any public sale of the Collateral or of the time after which any private sale of the Collateral or any other intended disposition thereof is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Debtor shown herein at least ten days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale, selling and the like shall include reasonable attorneys' fees (at least 15% of the unpaid balance if not prohibited by law) and other legal expenses. Debtor understands that Secured Party's rights are cumulative and not alternative.

12. Waiver of Default; Agreement Inclusive.

Secured Party may in its sole discretion waive a default, or cure, at Debtor's expense, a default. Any such waiver in a particular instance or of a particular default shall not be a waiver of other defaults or the same kind of default at another time. No modification or change in this Security Agreement or related note shall bind Secured Party unless in writing signed by Secured Party. No oral agreement shall be binding.

13. Financing Statements; Certain Expenses.

If permitted by law, Debtor authorizes Secured Party to file a financing statement with respect to the Collateral signed only by Secured Party and to file a carbon, photograph or other reproduction of this Security Agreement or of a financing statement. At the request of Secured Party, Debtor will execute any financing statements, agreements or documents, in form satisfactory to Secured Party which Secured Party may deem necessary or advisable to establish and maintain a perfected security interest in the Collateral, and will pay the cost of filing or recording the same in all public offices deemed necessary or advisable by Secured Party. Debtor also agrees to pay all costs and expenses incurred by Secured Party in conducting UCC, tax or other lien searches against the Debtor or the Collateral and such other fees as may be agreed.

14. Waiver of Defenses Acknowledgment.

If Secured Party assigns this Security Agreement to a third party ("Assignee"), then after such assignment:

- (a) Debtor will make all payments directly to such Assignee at such place as Assignee may from time to time designate in writing;
- (b) Debtor agrees that it will settle all claims, defenses, setoffs and counterclaims it may have against Secured Party directly with Secured Party and will not set up any such claim, defense, setoff or counterclaim against Assignee, Secured Party hereby agreeing to remain responsible therefor;
- (c) Secured Party shall not be Assignee's agent for any purpose and shall have no authority to change or modify this Security Agreement or any related document or instrument; and

14. Waiver of Defenses Acknowledgment (Continued)

(d) Assignee shall have all of the rights and remedies of Secured Party hereunder but none of Secured Party's obligations.

15. Miscellaneous.

Debtor waives all exemptions. Secured Party may correct patent errors herein and fill in such blanks as serial numbers and the like. Any provisions hereof contrary to, prohibited by or invalid under applicable laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining provisions hereof. Debtor and Secured Party each hereby waive any right to a trial by jury in any action or proceeding with respect to, in connection with, or arising out of this Security Agreement, or any note or document delivered pursuant to this Security Agreement. Debtor acknowledges receipt of a true copy and waives acceptance hereof. If Debtor is a corporation, this Security Agreement is executed pursuant to authority of its Board of Directors. Except where the context otherwise requires, "Debtor" and "Secured Party" include the heirs, executors or administrators, successors or assigns of those parties but nothing herein shall authorize Debtor to assign this Security Agreement or its rights in and to the Collateral. If more than one Debtor executes this Security Agreement, their obligations under this Security Agreement shall be joint and several. Except as provided herein, in any promissory note executed in connection with this Security Agreement or by applicable law, the Debtor shall have no right to prepay the indebtedness described in Paragraph 3 or in any promissory note executed in connection with this Security Agreement.

If at any time this transaction would be usurious under applicable law, then regardless of any provision contained in this Security Agreement or in any other agreement made in connection with this transaction, it is agreed that:

- (a) the total of all consideration which constitutes interest under applicable law that is contracted for, charged or received upon this Security Agreement or any such other agreement shall under no circumstances exceed the maximum rate of interest authorized by applicable law and any excess shall be credited to the Debtor; and
- (b) if Secured Party elects to accelerate the maturity of, or if Secured Party permits Debtor to prepay the indebtedness described in Paragraph 3, any amounts which because of such action would constitute interest may never include more than the maximum rate of interest authorized by applicable law, and any excess interest, if any, provided for in this Security Agreement or otherwise, shall be credited to Debtor automatically as of the date of acceleration or prepayment.

16. Special Provisions.

See Special Provisions Instructions below.

Dated: March 6, 19 90

Debtor:

Secured
Party:

THE CIT GROUP/EQUIPMENT FINANCING, INC.

Hargis Leasing, Inc.

Name of individual, corporation or partnership

By [Signature] Title VICE PRESIDENT

By [Signature] Title President
If corporation, have signed by President, Vice President or Treasurer,
and give official title If owner or partner, state which

2877 Brandywine Road, Suite 300
Address

200 Tremon Street
Address

Atlanta, Georgia 30341

Gordon, Wilkinson Co., Georgia 31031

City State Zip Code

City State Zip Code

If Debtor is a partnership, enter:
Partners' names

Home addresses

State of Georgia County of Wilkinson ^{MS} (ss:
(

On this 6th day of March, 1990, before me personally appeared Gary W. Hargis, known to me or so proven to be, who being by me duly sworn, says that he is the President of Hargis Leasing, Inc. that the foregoing instrument was signed on behalf of the said corporation by authority of its Board of Directors, and acknowledge that the execution of the foregoing instrument was the free act and deed of said corporation.

Witness my hand and seal this 6th day of March, 1990

Lynn A. Howe Margaret A. Sims
Signature of Notary

Wilkinson
Bibb County GA State

Notary Seal

My Commission Expires _____

Notary Public, Bibb County, Georgia
My Commission Expires February 23, 1991

2/27/94 Margaret A. Sims